



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG-114209-21]

RIN 1545-BQ17

User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to user fees for enrolled agents and enrolled retirement plan agents. This document also contains a notice of public hearing on the proposed regulations. The proposed regulations increase the renewal user fee for enrolled retirement plan agents from \$67 to \$140. In addition, the proposed regulations increase both the enrollment and renewal user fee for enrolled agents from \$67 to \$140. The proposed regulations affect individuals who are or apply to become enrolled agents and individuals who are enrolled retirement plan agents. The Independent Offices Appropriation Act of 1952 authorizes charging user fees.

DATES: Electronic or written comments must be received by **[INSERT DATE 71 DAYS**

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The public hearing

is being held by teleconference on **[INSERT DATE 69 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER] at 10 a.m. EST. Requests to speak

and outlines of topics to be discussed at the public hearing must be received by

[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL

REGISTER]. If no outlines are received by **[INSERT DATE 60 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER], the public hearing will be cancelled.

Requests to attend the public hearing must be received by 5 p.m. EST on **[INSERT DATE 67 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by **[INSERT DATE 66 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-114209-21). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process comments that are submitted on paper or through the mail. Any comments submitted on paper will be considered to the extent practicable. The IRS will publish any comments submitted electronically, and to the extent practicable comments submitted on paper, to the public docket. Send submissions to: CC:PA:LPD:PR (REG-114209-21), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-114209-21).

Individuals who want to testify (by telephone) at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-114209-21 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG-114209-21. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want to attend (by telephone) the public hearing must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the

email must contain the regulation number REG-114209-21 and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG-114209-21. To request special assistance during the telephonic hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-5177 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mark Shurtliff at (202) 317-6845; concerning cost methodology, Michael A. Weber at (202) 803-9738; concerning submission of comments, the public hearing, and the access code to attend the hearing by telephone, Regina Johnson at (202) 317-5177 (not toll-free numbers) or *publichearings@IRS.gov*.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to 26 CFR part 300 regarding user fees.

A. Enrolled Agents and Enrolled Retirement Plan Agents

Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department of the Treasury (Treasury Department) and requires that an individual seeking to practice demonstrate the necessary qualifications, competency, and good character, and reputation. The rules governing practice before the IRS are published in 31 CFR, Subtitle A, part 10, and reprinted as Treasury Department Circular No. 230 (Circular 230).

Section 10.4(a) of Circular 230 authorizes the IRS to grant enrollment as enrolled agents to individuals who demonstrate special competence in tax matters by passing a written examination, the Enrolled Agent Special Enrollment Examination (EA SEE), and

who have not engaged in any conduct that would justify suspension or disbarment under Circular 230.

Section 10.4(b) of Circular 230 authorizes the IRS to grant status as enrolled retirement plan agents to individuals who demonstrate special competence in qualified retirement plan matters by passing a written examination, the Enrolled Retirement Plan Agent Special Enrollment Examination (ERPA SEE), and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. The IRS stopped offering the ERPA SEE as of February 12, 2016, and no longer accepts applications for new enrollment as an enrolled retirement plan agent. Individuals who were already enrolled as enrolled retirement plan agents may continue to apply for renewal of their status.

Section 10.4(d) also authorizes the IRS to grant enrollment as an enrolled agent or an enrolled retirement plan agent to a qualifying former IRS employee by virtue of past IRS service and technical experience if the former employee has not engaged in any conduct that would justify suspension or disbarment under the provisions of Circular 230 and meets certain other requirements. Application for enrollment as an enrolled agent based on former employment with the IRS must be made within three years from the date of separation from that employment and does not require passing the EA-SEE. When the IRS discontinued offering the ERPA-SEE necessary for enrollment as an enrolled retirement plan agent for individuals without IRS work experience, effective February 12, 2016, the IRS stopped granting individuals enrollment as enrolled retirement plan agents by virtue of past service and technical experience in the IRS.

Once eligible for enrollment as an enrolled agent, whether by examination or former employment with the IRS, an individual must file an application for enrollment with the IRS and currently pay a \$67 nonrefundable user fee. To maintain active

enrollment and practice before the IRS, an individual who has been enrolled as an enrolled agent or enrolled retirement plan agent must file an application to renew enrollment every three years and currently pay a \$67 nonrefundable user fee. 31 CFR 10.6(d).

The IRS Return Preparer Office (RPO) is responsible for certain matters related to authority to practice before the IRS, including acting on applications for enrollment and renewal of enrolled agents and for renewal of enrolled retirement plan agents. 31 CFR 10.1. As a condition for enrollment as an enrolled agent, the RPO may conduct a federal tax-compliance check to determine whether an applicant has filed all required tax returns and has no outstanding federal tax debts and a suitability check to determine whether an applicant has engaged in any conduct that would justify suspending or disbaring any practitioner under Circular 230. 31 CFR 10.5(d). As a condition for renewal, enrolled agents and enrolled retirement plan agents must certify completion of the continuing education requirements. 31 CFR 10.6(e).

As part of its responsibility for administering the enrollment and renewal program, RPO determines whether applicants have met the above requirements. 31 CFR 10.6(j)(1). An applicant who is denied enrollment as an enrolled agent for failure to pass a tax-compliance check may reapply if the applicant becomes current with respect to the applicant's tax liabilities. 31 CFR 10.5(d)(2). Applicants who fail to meet the continuing education and fee payment requirements for renewal receive from RPO a notice that states the basis for RPO's determination of noncompliance and provides an opportunity to cure the failure. 31 CFR 10.6(j)(1).

B. User Fee Authority

The Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing the charge for services provided by the agency. The IOAA states that the services provided by an agency

should be self-sustaining to the extent possible. 31 U.S.C. 9701(a). The IOAA provides that user fee regulations are subject to policies prescribed by the President, which are currently set forth in the Office of Management and Budget (OMB) Circular A-25 (OMB Circular), 58 FR 38142 (July 15, 1993).

Section 6a(1) of OMB Circular A-25 states that when a service offered by an agency provides special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. Section 8e of OMB Circular A-25 requires agencies to review user fees biennially and update the fees as necessary to reflect changes in the cost of providing the underlying services. During the biennial review, an agency must calculate the full cost of providing each service, taking into account all direct and indirect costs to any part of the U.S. government. Under section 6d(1) of OMB Circular A-25, the full cost of providing a service includes, but is not limited to, an appropriate share of salaries, medical insurance and retirement benefits, management costs, and physical overhead and other indirect costs, including rents, utilities, and travel, associated with providing the service.

An agency should set the user fee at an amount that recovers the full cost of providing the service unless the agency requests, and the OMB grants, an exception to the full-cost requirement. Under section 6c(2) of OMB Circular A-25, the OMB may grant exceptions when the cost of collecting the fees would represent an unduly large part of the fee for the activity or when any other condition exists that, in the opinion of the agency head, justifies an exception. When the OMB grants an exception, the agency does not collect the full cost of providing the service and must fund the remaining cost of providing the service from other available funding sources. Consequently, the agency subsidizes the cost of the service to the recipients of reduced-fee services even though the service confers a special benefit on those

recipients who would otherwise be required to pay the full cost of receiving the benefit as provided for by the IOAA and OMB Circular A-25.

C. Enrollment and Renewal User Fees for the Enrolled Agent and Renewal User Fee for the Enrolled Retirement Plan Agent

As discussed in section A of this preamble, an individual who has been granted enrollment as an enrolled agent or an enrolled retirement plan agent may practice before the IRS. The IRS confers benefits on individuals who are enrolled agents or enrolled retirement plan agents beyond those that accrue to the general public by allowing them to practice before the IRS. Because the ability to practice before the IRS is a special benefit, the IRS charges a user fee to recover the full cost associated with administering the program for enrollment and renewal of enrolled agents and renewal of enrolled retirement plan agents. Final regulations (TD 9858) published in the **Federal Register** (84 FR 20801-01) on May 13, 2019, established the current \$67 fee per enrollment or renewal of enrollment. At that time the Treasury Department and the IRS determined that a \$67 user fee would recover the full direct and indirect costs the government would incur to administer the enrollment and renewal program.

As required by the IOAA and the OMB Circular, the RPO completed its 2021 biennial review of the enrollment and renewal user fees associated with enrolled agents and enrolled retirement plan agents. As discussed in section D of this preamble, during its review the RPO took into account the increase in labor, benefits, and overhead costs incurred in connection with providing services to individuals who enroll or renew enrollment as enrolled agents and enrolled retirement plan agents since the user fee was last changed in 2019. The increase took into account additional staffing that allows RPO to provide a higher quality of service to individuals seeking to enroll or renew enrollment. The RPO also took into account a re-allocation of certain labor costs in their methodology. The RPO determined that the full cost of administering the program for

enrolled agents and enrolled retirement plan agents has increased from \$67 to \$140 per application for enrollment or renewal. The proposed fee complies with the directive in the OMB Circular to recover the full cost of providing a service that confers special benefits on identifiable recipients beyond those accruing to the general public.

D. Calculation of User Fees Generally

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of processing an application for enrollment or renewal. The Federal Accounting Standards Advisory Board (FASAB) is the body that establishes GAAP that apply for federal reporting entities, such as the IRS. FASAB publishes the FASAB Handbook of Accounting Standards and Other Pronouncements, as Amended (Current Handbook), which is available at http://files.fasab.gov/pdf/2017_fasab_handbook.pdf. The Current Handbook includes the *Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government*. SFFAS No. 4 establishes internal costing standards under GAAP to accurately measure and manage the full cost of federal programs, and the methodology below is in accordance with SFFAS No. 4.

1. Cost Center Allocation

The IRS determines the cost of its services and the activities involved in producing them through a cost-accounting system that tracks costs to organizational units. The lowest organizational unit in the IRS's cost-accounting system is called a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. All costs of operating a cost center are recorded in the IRS's cost-accounting system and allocated to that cost center. The costs allocated to a cost center are the direct costs for the cost center's activities in

addition to allocated overhead. Some cost centers work on different services across the IRS and are not fully devoted to the services for which the IRS charges user fees.

2. Cost Estimation of Direct Costs

The IRS uses various cost-measurement techniques to estimate the cost attributable to administering the program for enrollment and renewal of enrolled agents and renewal of enrolled retirement plan agents. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject-matter experts on the time devoted to a service or activity. To determine the labor and benefits costs incurred to administer the enrollment and renewal program, the IRS estimated the number of full-time employees required to conduct activities related to administering the program. The number of full-time employees is based on both current employment numbers and future hiring estimates. Direct costs are incurred by the RPO and include direct costs for enrollment and renewal submission processing; tax compliance and background checks; continuing education and testing-related activities; communications, which include a toll-free helpline; and other oversight and support costs. Other direct costs associated with administering the program include travel, training and supplies.

3. Overhead

When the indirect cost of a service or activity is not specifically identified from the cost accounting system, an overhead rate is added to the identifiable direct cost to arrive at full cost. Overhead is an indirect cost of operating an organization that cannot be immediately associated with an activity. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity.

These costs can include:

- General management and administrative services of sustaining and supporting organizations.
- Facilities management and ground maintenance services (security, rent, utilities, and building maintenance).
- Procurement and contracting services.
- Financial management and accounting services.
- Information technology services.
- Services to acquire and operate property, plants and equipment.
- Publication, reproduction, and graphics and video services.
- Research, analytical, and statistical services.
- Human resources/personnel services.
- Library and legal services.

To calculate the overhead allocable to a service, the IRS multiplies an overhead rate by the labor and benefits costs. The IRS calculates the overhead rate annually based on cost elements underlying the Statement of Net Cost included in the IRS annual financial statements. The financial statements are audited by the Government Accountability Office. The overhead rate is the ratio of the IRS's indirect costs divided by the direct costs of its organizational units. Indirect costs are labor, benefits, and non-labor costs (excluding IT related to taxpayer services, enforcement, and business system modernization) from the supporting and sustaining organizational units. Direct costs are the labor, benefits, and non-labor costs for the IRS's organizational units that interact directly with taxpayers.

For this program user fee review, the Fiscal Year (FY) 2021 rate of 58.83 percent was used. The rate was calculated based on the FY 2020 Statement of Net Cost as follows:

Total Indirect Costs	\$4,274,512,375
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Total Direct Costs ÷ \$7,265,460,800

Overhead Rate 58.83%

E. Calculation of User Fee for Enrolled Agent Enrollment and Renewal and Enrolled Retirement Plan Agent Renewal

1. Cost Estimate

The IRS projected the estimated costs of direct labor and benefits based on the actual salary and benefits of employees who administer the enrollment and renewal program, reduced to reflect the percentage of time each individual spends administering the program. RPO's managers estimated the percentage of time these employees devote to administering the program based on their knowledge of actual program assignments. Fourteen employees work full-time on administering enrollment and renewal program-related activities. Additional staffing costs include oversight and support associated with these functions.

The baseline for the labor and benefits was the actual salary and benefits for FY 2021. From this baseline, the IRS estimated the direct labor and benefits costs over the next three years using an inflation factor for FYs 2022, 2023, and 2024. The IRS used a three-year projection because the increase in future labor and benefits costs are reliably predictable representations of the actual costs that will be incurred by the RPO. These estimated labor and benefits costs were then reduced to reflect the percentage of time each individual devoted to the program and are set out in the following table:

Year	Estimated direct labor and benefit costs
2022	\$2,115,293.00
2023	\$2,173,464.00
2024	\$2,233,234.00
Total	\$6,521,991.00

The IRS estimated \$15,000 in additional direct costs for each year for travel, training, and supplies.

The total estimated direct costs for the three years is \$6,566,991. After estimating the total direct costs, the IRS applied the FY 2021 overhead rate of 58.83 percent to the estimated direct costs to calculate indirect costs of \$3,863,360, for a total cost for the three-year period of \$10,430,351.

The calculation of the total costs of the program for 2022 through 2024 is below:

Direct Costs		\$6,566,991
Overhead at 58.83%	+	\$3,863,360
Total Program Costs		\$10,430,351

2. Volume of Applications

The number of enrollments and renewals processed during FYs 2018, 2019, and 2020 were 22,703; 29,350; and 22,367, respectively. The total number for the three years was 74,420. The IRS used this historical three-year volume to estimate the number of applications it expects to process in FYs 2022, 2023, and 2024.

3. Unit Cost Per Application

To arrive at the total cost per application, the IRS divided the estimated three-year total of program costs by the total volume of applications expected over the same three-year period to determine a unit cost per application of \$140, as shown below:

Total Program Cost		\$10,430,351
Volume	÷	74,420
Unit Cost		\$140

Special Analyses

Regulatory Planning and Review

This regulation is not significant and is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Only individuals, not businesses, can be enrolled agents or enrolled retirement plan agents. Accordingly, the user fee primarily affects individuals who are enrolled agents, apply to become enrolled agents, or are enrolled retirement plan agents. The Treasury Department and the IRS estimate that approximately 24,807 individuals will apply annually for enrollment as an enrolled agent, renewal as an enrolled agent, or renewal as an enrolled retirement plan agent.

Since individuals are not “small entities” for purposes of the Regulatory Flexibility Act, any economic impact of the user fee on small entities generally will occur only when an enrolled agent or enrolled retirement plan agent owns a small business or when a small business employs enrolled agents or enrolled retirement plan agents and reimburses them for their renewal fees. Therefore, a substantial number of small entities is not likely to be affected. Further, the economic impact on any small entities affected would be limited to paying the \$73 difference in cost between the \$140 user fee and the previous \$67 user fee (for each enrolled agent or enrolled retirement plan agent that a small entity employs and pays for), which is unlikely to present a significant economic impact. The total economic impact of this regulation is thus approximately \$1,810,911 annually, which is the product of the approximately 24,807 individuals and the \$73 increase in the fee. Accordingly, the rule is not expected to have a significant

economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the “**ADDRESSES**” section. The Treasury

Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable, any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing is being held by teleconference on **[INSERT DATE 71 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, beginning at 10 am EST unless no outlines are received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to comment by telephone at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** as prescribed in the preamble under the “**ADDRESSES**” section.

A period of 10 minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at www.regulations.gov, search IRS and REG-114209-21. Copies of the agenda will also be available by emailing a request to publichearings@irs.gov. Please put “REG-114209-21 Agenda Request” in the subject line of the email.

Announcement 2020-4, 2020-17 I.R.B. 667 (April 20, 2020), provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these regulations is Mark Shurtliff, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300--USER FEES

Paragraph. 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.5 is amended by revising paragraphs (b) and (d) to read as follows:

§300.5 Enrollment of enrolled agent fee.

* * * * *

(b) Fee. The fee for initially enrolling as an enrolled agent with the IRS is \$140.

* * * * *

(d) Applicability date. This section is applicable beginning [the date that is 30 days after these regulations are published as final regulations in the **Federal Register**].

Par. 3. Section 300.6 is amended by revising paragraphs (b) and (d) to read as follows:

§300.6 Renewal of enrollment of enrolled agent fee.

* * * * *

(b) Fee. The fee for renewal of enrollment as an enrolled agent with the IRS is \$140.

* * * * *

(d) Applicability date. This section is applicable beginning [the date that is 30 days after these regulations are published as final regulations in the **Federal Register**].

Par. 4. Section 300.10 is amended by revising paragraphs (b) and (d) to read as follows:

§300.10 Renewal of enrollment of enrolled retirement plan agent fee.

* * * * *

(b) Fee. The fee for renewal of enrollment as an enrolled retirement plan agent with the IRS is \$140.

* * * * *

(d) Applicability date. This section is applicable beginning [the date that is 30 days after these regulations are published as final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2022-04303 Filed: 2/25/2022 11:15 am; Publication Date: 3/1/2022]